IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4725 of 2000
With
CIVIL APPLICATION - FOR VACATING STAY No. 11036 of 2000
In SPECIAL CIVIL APPLICATION No. 4725 of 2000
With
SPECIAL CIVIL APPLICATION No. 15969 of 2005
To
SPECIAL CIVIL APPLICATION No. 15997 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TALUKA PANCHAYAT - Petitioner(s)

Versus

VAJABHAI KUBERBHAI & 30 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner No(s).: 1.

MRS DT SHAH for Respondent No(s).: 1, 2, 3, 4,
5, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 22,
23, 24, 25, 26, 27, 28, 29,30.
- for Respondent No(s).: 0.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 05/08/2005

ORAL JUDGMENT

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1.0. These petitions are directed against the

judgment and award dated 25th October, 1999 passed by the Labour Court, Junagadh in References [L.C.J.] No. 140/95 to 169/95, whereby the Labour Court has directed the petitioner to reinstate the respondents in service with continuity of service along with 45% back wages.

1.1. Before proceeding with the matter on merits, I am of the opinion that this matter requires serious consideration *inasmuch* as there is systematic fraud which has been committed by the respondents through legal proceedings in the Court of Law by forging/creating documents and public money were tried to be misused in the name of the workmen.

2. The short facts of the case are that the respondents were working as Rojamdar with the petitioner. It is the case of the respondents that they were working as such since last five years. The petitioner without following any procedure under the Industrial Disputes Act, 1947 orally terminated the services of the respondents w.e.f.25th January, 1985. Feeling aggrieved by the said order, the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Junagadh for adjudication. The Labour Court after considering the case

on merits, passed the impugned award. Hence, this petition.

3. Mr. Hathi learned advocate for the petitioner contended that the Labour Court has erred in not appreciating the fact that the respondents were working as daily wagers and, therefore, they had no right to continue on the posts. He has further contended that the Labour Court has recorded a finding that the respondents were employed on scarcity work and, therefore, there is no breach of Section 25F of the Industrial Disputes Act, 1947. He has further contended that the respondents have not worked for more than 240 days in a year nor any evidence has been produced that they have worked for 240 days in a year.

3.1. In support of his contention, Mr. Hathi has placed reliance on the decision of the Apex Court in the case of **Himanshu Kumar Vidyarthi v. State of Bihar & Ors., reported in A.I.R. 1997 S.C. p. 3657** wherein the Court has held as under :-

> “..... They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be

> construed to be a retrenchment under the Industrial Disputes Act. The concept of “retrenchment”, therefore cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wage employees, have no right to the post, their disengagement is not arbitrary.”

3.2. Mr. Hathi has further placed reliance on the decision of this Court in the case of District Panchayat, Jamnagar & Anr., v. Danubha K. Gohil & Anr., reported in 2000 (1) G.L.H. p. 238, wherein the Court has held as under :-

> “Normally this Court will not sit as a Court of appeal over the award rendered by the Labour Court. However, this Court will examine whether the award is legal and in accordance with law or whether it is perverse. An award is said to be legal and in accordance with law when it is passed after considering the relevant provisions of the law applicable to the fact of the case. An award is to be perverse when it is rendered on mere presumptions, surmises and conjectures. An award is further said to be perverse when it is passed without considering the material on record and the requirements of law applicable to the dispute referred for adjudication. Likewise, if complete adjudication is not made by the Labour Court, the award can be said to be illegal as well as perverse inasmuch

> as material defence taken by the petitioners was not taken into consideration by the Labour Court."

3.2. Lastly Mr. Hathi has contended that majority of the employees were minor at the relevant point of time. Thus, on these grounds, the impugned award is required to be quashed and set aside.

4. Mrs. D. T. Shah learned advocate appearing for the respondents has contended that the contention with regard to age was not raised before the Labour Court and the said contention was raised before this Court for the first time. She has, therefore, submitted that the award passed by the Labour Court is just and proper and the same is required to be confirmed.

4.1. Lastly, Mrs. Shah has further contended that the if the Court is of the opinion that the impugned award is to be set aside, the Court shall grant the Civil Application No. 11036 of 2000 for benefits under Section 17B of the Industrial Disputes Act, 1947 from the date of application till today.

5. I have heard the learned counsel for the parties and have perused the materials produced on record. From

the document at annexure 68-A, it appears that majority of the employees were minor at the relevant point of time. Before the Labour Court the petitioner had specifically contended that the respondents were never in their service and they were working only on daily wage basis and, therefore, the Labour Court ought not to have granted reinstatement with continuity in service along with 45% back wages. Apart from that the respondents have raised the Reference almost after 7 to 8 years.

5.1. However, looking to the documents on record, I am of the opinion that the issue involved in this petition is very serious and the same requires serious consideration. Looking to the seriousness of the matter, in my view this matter is required to be referred to the C.B.I., for initiating inquiry against the respondents. But in order to avoid harassment to the poor people, I am not referring this matter to the C.B.I., for initiating inquiry against them and also against the authority. Therefore, on the facts and circumstances of the case and in view of the evidence produced at annexure-K along with statement of claim of the petitioner, it appears that they were never employed by the petitioners. Even otherwise, the respondents were appointed on daily wage

basis for scarcity work and in view of the principle laid down by the Full Bench of this Court in the case of **H.K. Makwana v. State of Gujarat reported in 1994 (2) G.L.R. p. 1002**, reinstatement cannot be granted. Thus, the impugned award passed by the Labour Court is based on the concocted facts and the same is required to be quashed and set aside.

6. The application for Section 17B cannot be granted in view of the fact that the said claim is also based on the concocted facts and the public money cannot be given under the sympathy to the workmen since the basic foundation is on fraud.

7. In the premises aforesaid, these petitions are allowed. The impugned award dated 25th October, 1999 passed by the Labour Court, Junagadh in References [L.C.J.] No. 140/95 to 169/95, is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

CIVIL APPLICATION No. 11036 of 2000 :

In view of the order passed in main matter, no

orders on this Civil Application. The Civil Application stands disposed of accordingly.

[K.S. JHAVERI, J.]

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